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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,262	09/17/2003	Richard A. Jewell	23308C	7756
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WEYERHAEUSER COMPANY INTELLECTUAL PROPERTY DEPT., CH 1J27 P.O. BOX 9777 FEDERAL WAY, WA 98063				EXAMINER HUG, ERIC J
				ART UNIT 1731 PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/666,262

Filing Date: September 17, 2003

Appellant(s): JEWELL ET AL.

Lee E. Johnson
For Appellant

MAILED
JAN 10 2006
GROUP 1700

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 28, 2005, appealing from the Office action mailed February 7, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner:

Claims 9, 11/9, 12/9, and 13/9 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Canadian patent in view of Huth or Schultz, with or without Nicholas (US 5,462,589). It is felt that Nicholas is applicable to previously rejected claims 18-21, now withdrawn from Appeal, and does not add to the substance of the rejection for claims 8-13.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

CA 1,134,564	Holbek	11-1982
US 5,730,907	Schultz et al.	03-1998
US 5,049,383	Huth et al.	09-1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over CANADIAN PATENT 1,134,564 in view of HUTH or SCHULTZ et al.

CANADIAN PATENT 1,134,564 discloses providing a wood-derived cellulose fiber that has been partially purified by a chemical pulping process, e.g. sulphate (kraft) or sulphite pulp fiber, treating the pulp fibers with a biocidal amount of metal salt impregnate, and then drying the treated fibers (see page 6, lines 18-25). The metal salt is preferably a copper salt. The pulp fibers may be bleached or unbleached before treatment (page 2, lines 1-2). The impregnating agent includes well-known types of wood preservation agents, given starting on page 3, to protect the fibers from biodegradation (page 3, line 17). Page 8, lines 2-5 discloses the total amount of impregnating agent is at least 1%. The wood preservation agents include metal salts of organic compounds.

The Canadian patent does not disclose specifically the claimed didecyldimethylammonium chloride (DDAC) and/or bromide (DDAB), however HUTH or SCHULTZ et al teaches that DDAC and/or DDAB are effective organic metal salt biocides which protect wood from biodegradation. It would have been obvious to use the wood preservation agent of HUTH or SCHULTZ et al as the well-known wood preservation agent of the Canadian Patent as it functions to preserve the wood, and thus it would have been obvious to use the DDAC and/or DDAB of HUTH or SCHULTZ et al with the copper salts. The total amount of impregnate disclosed by the Canadian patent reads on the claimed range. Regarding the specific quantities of copper salt and organic metal salt wood preservative, the discovery of

an optimum value of a result effective variable in a known process is ordinary within the skill of one of ordinary skill in the art. See, e.g. *In re BOESCH*, 205 USPQ 2d 215,219 (CCPA 1980).

One of ordinary skill in the art would necessarily and inevitably have optimized amount of copper salt and wood preservative depending upon the amount of biodegradation protection desired and/or required.

(10) Response to Argument

Applicant has argued that the process of the instant invention not only provides effective biocidal treatment of cellulose fibers, but also provides fibers that require less refining energy than fibers treated with other biocides. However, the claims state only that the treated fiber is resistant to fiber length degradation during refining. The fibers of the instant invention have not been shown to differ from the fibers of the applied art. There are also no claimed method steps wherein the amount of refining energy is claimed. It is felt that the fibers treated according to the applied prior art would have the same resistance to fiber length degradation as the fibers of the instant invention as they are the same material (chemical wood pulp) treated with the same biocide components (copper salts and wood preservatives) at the same treatment levels. Thus, the method claims are not patentably distinguishable over the applied art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Eric Hug



Conferees:

Steven Griffin 

Pat Ryan 